

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALEXANDER BROWN	:	CIVIL ACTION
	:	
v.	:	
	:	
WENDY LYNN PEWS, PHILA, DISTRICT	:	
ATTY LYNN ABRAHAM,	:	
COMMONWEALTH PENNSYLVANIA,	:	
PHILA, MUNICIPAL COURT, LOUIS	:	NO. 06-5091
PRESENZA, COMMONWEALTH, PA,	:	NO. 07-1527
and CITY OF PHILA	:	CONSOLIDATED

MEMORANDUM AND ORDER

NORMA L. SHAPIRO, S.J.

APRIL 7, 2008

Petitioner Alexander Brown (“Brown”) filed two petitions for writ of habeas corpus. In Civil Action No. 06-5091, Brown claims double jeopardy because he was arrested based on charges that had already been dismissed. In Civil Action No. 07-1527, Brown claims: (1) denial of adequate access to the courts; (2) double jeopardy; and (3) conspiracy to deem Brown incompetent in order to keep him incarcerated and/or committed to the psychiatric unit.

This court consolidated the two habeas petitions and referred them to the Honorable Arnold C. Rapoport, United States Magistrate Judge, for a report and recommendation (“R&R”). Magistrate Judge Rapoport recommended that the petition filed under Civil Action No. 06-5091 be dismissed as moot, and the petition filed under Civil Action No. 07-1527 be dismissed without prejudice for failure to exhaust state court remedies. Brown filed objections. The court ordered respondents to respond to Brown’s objections; respondents filed a response. For the following reasons, the Magistrate Judge’s R&R will be approved and adopted and Brown’s objections will be overruled.

I. CIVIL ACTION NO. 06-5091

Brown's first habeas petition concerns charges of solicitation to commit prostitution, for which Brown was incarcerated on May 27, 2005. After Brown was released from custody, he was arrested and charged with disorderly conduct. According to Brown, when he was arrested, he was told the charges of solicitation to commit prostitution were still pending. In his habeas petition, Brown claims it would be double jeopardy to bring solicitation to commit prostitution charges against him again.

A prisoner may seek federal habeas relief only if he is in custody in violation of the constitution or federal law. 28 U.S.C. § 2254(a). The Magistrate Judge recommended that Brown's habeas petition be dismissed as moot because Brown was released from custody and the charges of solicitation to commit prostitution were dismissed. In his objections, Brown argues the Magistrate Judge's recommendation does not address the issues underlying his petition.

The state court docket shows the Municipal Court of Philadelphia County dismissed the charges against Brown for solicitation to commit prostitution on December 5, 2006. (Response to Petition for Writ of Habeas Corpus, Ex. C.) Brown does not have a colorable double jeopardy claim because he is not in custody for solicitation to commit prostitution and there are no such charges pending. The Magistrate Judge is correct that Brown's habeas petition must be dismissed as moot. Brown's objections to dismissal of Civil Action No. 06-5091 will be overruled.

II. CIVIL ACTION NO. 07-1527

The second habeas petition relates to charges of disorderly conduct, for which Brown was arrested on November 4, 2006. Brown claims he has been denied access to the court because he

has not had an arraignment or trial, has not met with an attorney, and does not know the evidence against him. Brown also claims double jeopardy and conspiracy to deem him incompetent. The Magistrate Judge found Brown's claims unexhausted because Brown was scheduled for trial on September 5, 2007.

In his objections, Brown avers that after his trial on October 30, 2007, he sent a direct appeal to the municipal court, but the appeal was not noted on the docket. In their response to Brown's objections, respondents attached a state court docket showing an appeal from Brown's conviction of disorderly conduct was filed on November 28, 2007. (Response to Pet.'s Objections, Ex. A.) Brown's objections to dismissal without prejudice of Civil Action No. 07-1527 will be overruled.

III. OUTSTANDING MOTIONS

Brown filed a request for extraordinary relief and motions for protection order in each of his pending habeas petitions. Brown also filed a motion to reconsider any order or answer filed under Civ. A. No. 06-5091. Because the habeas petitions will be dismissed, these motions will be denied as moot.

Brown has filed a request for extraordinary relief and motion for protection order under his third habeas action at Civil Action No. 07-5365. This court referred the third habeas action to Magistrate Judge Rapoport for an R&R, and awaits the Magistrate Judge's recommendation regarding Brown's outstanding motions.

IV. CONCLUSION

The Magistrate Judge's R&R will be approved and adopted. Brown's habeas petition filed at Civil Action No. 06-5091 will be dismissed as moot, and Brown's habeas petition filed at

Civil Action No. 07-1527 will be dismissed without prejudice for failure to exhaust state remedies. Brown's objections will be overruled. Brown's request for extraordinary relief, motions for protection order, and motion to reconsider any order or answer, filed under Civil Action No. 06-5091 and Civil Action No. 07-1527, will be denied as moot. Brown's request for extraordinary relief and motion for protective order, filed under Civil Action No. 07-5365, will be referred to Magistrate Judge Rapoport.

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CIVIL ACTION

v.

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ATTY LYNN ABRAHAM, :
COMMONWEALTH PENNSYLVANIA, :
PHILA, MUNICIPAL COURT, LOUIS :
PRESENZA, COMMONWEALTH, PA, :
and CITY OF PHILA :**

**NO. 06-5091
NO. 07-1527
CONSOLIDATED**

ORDER

AND NOW, this 7th day of April, 2008, upon consideration of the petitions for writ of habeas corpus, the report and recommendation of the Honorable Arnold C. Rapoport, United States Magistrate Judge, petitioner's objections to the report and recommendation, and all other relevant papers in the record, for the reasons set forth in the accompanying memorandum, it is **ORDERED** that:

1. The report and recommendation is **APPROVED** and **ADOPTED**.
2. The petition for a writ of habeas corpus, filed under Civ. A. No. 06-5091, is **DISMISSED AS MOOT**.
3. The petition for a writ of habeas corpus, filed under Civ. A. No. 07-1527, is **DISMISSED without prejudice** for failure to exhaust state remedies.
3. Petitioner's objections are **OVERRULED**.
4. Petitioner's motion for court to reconsider any order or answer with regard to Civ. A. No. 06-5091 (paper no. 25, filed under Civ. A. No. 06-5091) is **DENIED AS MOOT**.
5. Petitioner's request for extraordinary relief (paper no. 27, filed under Civ. A. No. 06-5091; paper no. 24, filed under Civ. A. No. 07-1527) is **DENIED AS MOOT**.
6. Petitioner's motion for a protection order (paper no. 28, filed under Civ. A. No. 06-5091; paper no. 25, filed under Civ. A. No. 07-1527) is **DENIED AS MOOT**.
7. Petitioner's second motion for protection order (paper no. 30, filed under Civ. A. No. 06-5091; paper no. 27, filed under Civ. A. No. 07-1527) is **DENIED AS MOOT**.

8. Petitioner's request for extraordinary relief (paper no. 7, filed under Civ. A. No. 07-5365) is **REFERRED** to Magistrate Judge Rapoport.

9. Petitioner's motions for protective order (paper nos. 8 and 10, filed under Civ. A. No. 07-5365) are **REFERRED** to Magistrate Judge Rapoport.

10. Because petitioner has failed to make a substantial showing of the denial of a constitutional right, there is no basis for issuing a certificate of appealability.

/s/ Norma L. Shapiro

S.J.